

# Unemployment Insurance and Workers' Compensation Programs

Vermont's 2010 Legislative Changes

[www.labor.vermont.gov](http://www.labor.vermont.gov)

# Agenda

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- n Applicable Acts
- n Unemployment Insurance (UI) Program
- n Workers' Compensation (WC) Program
- n Program Integrity
- n Keeping UI Costs Down
- n Keeping WC Costs Down
- n Resources

# Applicable Acts

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- n Act 142 (H.647)
  - n An Act Relating to Misclassification of Employees to Lower Premiums for Workers' Compensation and Unemployment Compensation
- n Act 124 (S.290)
  - n An Act Relating to Restoring Solvency to the Unemployment Trust Fund
- n Act 146 (H.792)
  - n An Act Relating to Implementation of Challenges for Change
- n Act 118 (S.182)
  - n An Act Relating to Determining Unemployment Compensation Experience Rating for Successor Businesses
- n Link for all acts is provided at end of presentation

# Unemployment Insurance (UI) Program

- n Wealth of information on the web related to:
  - n Understanding the program
    - n What creates employer liability for reporting
    - n “ABC” test – determines whether wages are reportable
    - n Employer and claimant responsibilities
  - n Background information on Trust Fund reform
    - n How we got here
    - n How does Vermont compare to other states
    - n More details on 2010 changes

# Unemployment Insurance Program

## è Reform goals

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- n Return the Trust Fund to the black as soon as feasible.
- n Return the fund to adequate level before the next recession to avoid falling back into debt.
- n Maintain benefits at or above national averages.
- n Keep the taxable wage base as low as possible.
- n Minimize borrowing, which
  - n minimizes interest expenses and FUTA tax costs.

# Unemployment Insurance Program

## è Employer Impacts

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- n Taxable wage base – Act 124 (S.290)
  - n The taxable wage base is the basis used for figuring an employer's UI taxes.
- n *Effective January 1, 2011*
  - n Taxable wage base will increase from the current \$10,000 to \$13,000.
- n *Effective January 1, 2012*
  - n Taxable wage base will become \$16,000.

# Unemployment Insurance Program

## è Employer Impacts

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- n Taxable wage base (continued)
- n Effective when Trust Fund is solvent (balance greater than zero and loans repaid)
  - n Taxable wage base will index upward annually by overall wage growth after the Trust Fund becomes solvent, **projected** to be 2015.
- n Effective upon return to Schedule III and I
  - n Taxable wage base will drop by \$2,000 January 1<sup>st</sup> upon return to tax rate schedule III and another \$2,000 at schedule I.

# Unemployment Insurance Program

## è Employer Impacts

- n Fines and penalties - Acts 124 and 142 (S.290 and H.647)
- n *Effective July 1, 2010* - three areas of change
  - n **Penalties associated with late requests for information** was increased from \$35 to \$100
    - n Requests for separation and/or wage information (following an unemployment claim being filed)
    - n Quarterly Wage and Contribution Reports
  - n **Benefits paid improperly** based on late report
    - n Employer's account will remain charged
  - n **Misclassification of a worker** (failure to report when required)
    - n Up to \$5,000 penalty, per worker, per report
    - n VDOL conducting public education



# Unemployment Insurance Program è Employer Impacts

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- n Notice of Experience Rating – Act 118 (S.182)

- n *Effective July 1, 2010*

- n Upon request, seller of business must disclose experience rating to potential buyer

# Unemployment Insurance Program

## è Employer Impacts

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- n New Hire Reporting – Act 146 (H.792)
- n *Effective July 1, 2010*
  - n Changes included:
    - n Requirement to report within **10 days** of first date work was performed
    - n Requirement to include first date of employment
    - n Definition for first date of employment = first date services are performed for compensation

# Unemployment Insurance Program

## è Employer Impacts

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### n Why is New Hire Reporting Important?

- n Prevents UI overpayments once work begins
- n Helps 1,000's of kids receive timely child support
- n Helps prevent fraud and improper payments in means tested programs

### n New Hire Reporting reminders

- n File on-line
  - n [www.labor.vermont.gov](http://www.labor.vermont.gov)
  - n **Employer Applications** (left hand side of every Labor webpage)

# Unemployment Insurance Program

## è Claimant Impacts

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- n Maximum Weekly Benefit Amount - Act 124 (S.290)
  - n Remains frozen at \$425 while we are borrowing (current law)
  - n Will resume increasing when the Trust Fund is solvent (balance greater than zero and loans repaid), which is **projected** to be July 2015
  - n To help make up for the lost increases that would have otherwise occurred, the maximum amount will become 57% of the overall average annual wage upon return to tax rate schedule III.

# Unemployment Insurance Program

## è Claimant Impacts

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- n Variable duration of benefits – Act 124 (S.290)
- n *Effective July 1, 2011*
  - n Maximum number of weeks to be claimed in a benefit year will vary
    - n A claimant will be eligible for an amount equal to 26 weeks times their weekly benefit amount or 46% of the “base period” wages, whichever is less.
    - n Claimants who work year round and find themselves unemployed, should not be affected by this change.

# Unemployment Insurance Program

## è Employer and Claimant Impact

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- n Misconduct – Act 124 (S.290)

- n *Effective May 24, 2010*

- n Being Fired for Misconduct

- n **Maximum disqualification** period increased from 12 to 15 week delay, after which the fired employee can still collect UI

- n Misconduct is defined as “willful and culpable neglect of an employer’s interest”, which employer has burden to demonstrate. It is NOT a single event of showing up late, but rather repeated negative behavior after warning by the employer

- n A definition for gross misconduct has now been added to the statutes.

- n Examples include but are not limited to: theft; fraud; intoxication; intentional serious damage to property; intentional infliction of personal injury; any conduct that constitutes a felony; or repeated incidents after written warning of either of the following: unprovoked insubordination or public use of profanity

# Unemployment Insurance Program

## è Employer and Claimant Impact

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### n Misconduct – Act 124 (S.290)

### n *Effective for new claims filed after July 1, 2011*

#### n Being Fired for Misconduct

#### n Maximum number of weeks capped, not to exceed 23 full weeks

#### n Being Fired for gross misconduct

#### n Use of wages prohibited for calculation of weekly benefit amount.

### n Information related to misconduct and UI

#### n Documentation is often the key to supporting that the dismissal was due to misconduct (for UI purposes)

#### n Further information is available on VDOL's web site at [www.labor.vermont.gov](http://www.labor.vermont.gov)

# Unemployment Insurance Program

## è Claimant Impacts

n Waiting period week – Act 124 (S.290)

n *Effective July 1, 2012*

- n All new claims effective July 1, 2012 and subsequent will require, an otherwise payable claim, to become a “waiting period” week – meaning a person claiming UI benefits will have to wait one week after they have separated that will not be paid.
- n Will still get full maximum duration, just delayed by one week
- n Claimants must file for, but will not be paid for the waiting period claim, unless such week follows weeks disqualified as a result of receiving severance pay
- n Waiting periods sunset effective July 1, 2017, or when the Trust Fund balance is greater than zero, whichever is later.



# Unemployment Insurance Program

## è Claimant Impacts

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- n Severance pay – Act 124 (S.290)
- n *Effective for new claims filed after July 1, 2011*
  - n Claimant who received severance pay upon separation will be disqualified, meaning they will not be able to receive an unemployment benefit for the same time they have received severance pay
  - n However, claimants will still be able to collect their maximum duration of benefits, but only after the severance is used.

# Unemployment Insurance Program è Claimant Impacts

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- n Exempted part-time earnings – Act 124 (S.290)
- n *Effective July 1, 2012*
  - n All new claims effective July 1, 2012 and subsequent will have new system to exempt \$40.00 or 30% of gross wages earned (whichever is greater).
  - n Advantages include:
    - n smoother transition to full-time employment;
    - n removing the existing cliff; and
    - n greater incentive for claimant to accept full-time work rather than limiting to part-time

# Unemployment Insurance Program è Claimant Impacts

## n New Disregard Earnings Example:

Claimant works 20 hours at \$12.00 per hour, earning a total of \$240.00.

If no work was performed, worker would receive UI amount of \$409.00.

Current disregarded amount:				New disregarded amount:			
30% of WBA = \$122.70				30% of gross wages = \$72.00			
Current Income			Amt if clt worked full time	New Calculations			Amt if clt worked full time
Wages	UI amount	Total Income		Wages	UI amount	Total Income	
\$240.00	\$292.00	\$532.00	\$480.00	\$240.00	\$241.00	\$481.00	\$480.00

# Unemployment Insurance Program è Claimant Impacts

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n Enhanced Assistance – Act 124 (S.290)

n *Effective July 1, 2010*

- n Put into law VDOL's enhanced efforts to help assist unemployment claimants in getting back to work, including making these services a priority in regional offices
- n Re-employment services in regional offices will continue to utilize available grants or other resources
- n Claimants required to participate in re-employment services when directed.

# Workers' Compensation (WC) Program

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- n Wealth of information on the web related to:
  - n Understanding the program
    - n What creates employer liability for coverage
    - n Best practices
    - n Independent contractor versus employee
    - n Navigating the Workers' Comp system
    - n What is a self-insured employer
    - n Reporting fraud

# Workers' Compensation Program

## è Handling of Workers' Comp Claims

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- n Three sections directly affect the handling of Vermont Workers' Compensation claims - Act 142 (H.647)
  1. Legal requirements to discontinue a benefit are CHANGED
    - n *Section 14 - Effective June 1, 2010*
  2. New weekly payment requirements
    - n *Section 15 - Effective July 1, 2010*
  3. Claimants may videotape insurer requested medical exams
    - n *Section 16 - Effective July 1, 2010*

# Workers' Compensation Program

## è Handling of Workers' Comp Claims

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### 1. Legal requirements to discontinue a benefit are **CHANGED**

#### A. Vocational Rehabilitation Requirement

- n If a workers' compensation insurer wishes to stop payments (file a Form 27) to a worker who has been out of work for 90 days, the adjuster must verify that the worker has been offered vocational rehabilitation screening and vocational rehabilitation services, if the worker is eligible for such services. Failure to do so will prevent the discontinuance from taking effect and the insurer will have to continue providing weekly payment.

# Workers' Compensation Program

## è Handling of Workers' Comp Claims

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### 1. Legal requirements to discontinue a benefit are **CHANGED** (continued)

#### B. Evidence Submission Requirement

- n When a discontinuance is filed (Form 27) a workers' compensation insurer is now required to submit all relevant evidence in its possession, including evidence that does not support the discontinuance, with the discontinuance (Form 27) unless that evidence has already been submitted to the department and either to the claimant or claimant's attorney.



# Workers' Compensation Program

## è Handling of Workers' Comp Claims

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1. Legal requirements to discontinue a benefit are **CHANGED** (continued)
  - c. A new standard of review – preponderance of evidence
    - n The legal standard used to evaluate the evidence supporting a discontinuance has been changed. A Workers' Compensation Specialist is required to review all evidence in the file, whether submitted by claimant or the insurer, and decide whether a preponderance of all evidence supports the discontinuance. The legal standard is much harder for an insurer to meet, as compared to the former “reasonableness” standard.

# Workers' Compensation Program

## è Handling of Workers' Comp Claims

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1. Legal requirements to discontinue a benefit are **CHANGED** (continued)
  - D. Claimant's right to submit additional new evidence
    - n Even if the discontinuance is approved, a claimant may request that benefits be reinstated prior to a formal hearing providing additional new evidence to the department that establishes that a preponderance of all evidence now supports the claim.

# Workers' Compensation Program

## è Handling of Workers' Comp Claims

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### 2. New weekly payment requirements

#### A. Specify mailing date

- n A workers' compensation insurer is now **REQUIRED** to specify the **weekday** on which a weekly workers' compensation benefit will be **mailed** to the claimant or electronically deposited in claimant's account and notify the claimant and the department of that day.

#### B. Penalties if not mailed on date

- n If weekly payment is not mailed or deposited on the specified date, the insurer owes the claimant an additional \$10.00, or 5% of the weekly amount, whichever is **GREATER**.

# Workers' Compensation Program

## è Handling of Workers' Comp Claims

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### 2. New weekly payment requirements (continued)

- c. Affidavit as to actual date mailed required if there is a dispute.
  - n If there is a dispute, the adjuster or other responsible party employed by the insurer, must be able to provide a sworn affidavit as to the date the money was mailed or deposited.
  - n Note: elsewhere in Act 142 (H.647) the Legislature increased the penalty for a false statement up to \$20,000.

# Workers' Compensation Program

## è Handling of Workers' Comp Claims

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3. Claimants may videotape insurer requested medical exams
  - n The medical examiner may audiotape the examination, but must obtain the claimant's permission before videotaping the examination.

# Workers' Compensation Program

## è Investigators

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- n Additional Investigator - Act 142 (H.647)
- n *Effective July 1, 2010* – Section 2
  - n Mandated a 4<sup>th</sup> investigator to assist with combating misclassification
    - n Misclassification
      - § Miscoding
      - § Independent Contractor vs. Employee
    - n Additional .055% was added to premium to cover 4<sup>th</sup> position
    - n VDOL conducting public education

# Workers' Compensation Program

## è Failure to Insure

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- n Stop work order - Act 142 (H.647)
- n *Effective July 1, 2010* - Section 3
  - n In place immediately until the employer has secured Workers' Comp insurance (5-day grace period removed)
    - n Delay if stop-work order would immediately threaten safety or health of public
  - n Administrative penalty up to \$150 per day before stop work order and \$250 per day until you have Workers' Comp insurance
  - n Notice shall be posted

# Workers' Compensation Program

## è Failure to Insure

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### n Stop work order (continued)

- n Employer against whom a stop-work order has been issued is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for a period of up to three years following the date of the issuance of the stop-work order

### n **Stop Work Order violation penalty**

- n Civil penalty not more than \$5,000 for 1<sup>st</sup> violation and not more than \$10,000 for 2<sup>nd</sup> or subsequent violation; or
- n Criminal fine of not more than \$10,000 or imprisonment for not more than 30 days, or both.



# Workers' Compensation Program

## è False statements

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n False statement - Act 142 (H.647)

n *Effective July 1, 2010* - Section 2

- n Any person who willfully makes a material false statement for either his or her benefit or to benefit another may be penalized \$20,000 (up from \$5000) in addition to losing any benefit.
- n In addition an employer who falsely represents workers as independent contractors is prohibited from contracting with the state or its subdivisions for up to 3 years.

# Workers' Compensation Program

## è Successor liability

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- n Successor Liability - Act 142 (H.647)

- n *Effective July 1, 2010* - Section 5

- n Any penalty assessed or order issued under this chapter or 8 V.S.A. § 3661 shall continue in effect against any successor employer that has one or more of the same principals or corporate officers as the employer against which the penalties were assessed or order issued and is engaged in the same or similar business.

# Workers' Compensation Program

## è Unlawful Discrimination

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- n Unlawful Discrimination - Act 142 (H.647)
- n *Effective June 1, 2010* – Sections 7 & 8
  - n Public may report potential misclassification using on-line reporting form
    - n The name of the individual reporting shall remain confidential
    - n Employer is prohibited from retaliating or taking any negative action against an individual because the employer knows or suspects a complaint was filed

# Workers' Compensation Program

## è State Contracts

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- n State Contracts - Act 142 (H.647)
- n *Effective July 1, 2010* - Sections 5b and 17
  - n The Agency of Administration shall ensure that the state and any of its subdivisions do not contract, directly or indirectly, with employers who are prohibited from contracting by the commissioner of labor pursuant to 21 V.S.A. § § 692, 708, and 1314a or the commissioner of banking, insurance, securities, and health care administration pursuant to 8 V.S.A. § 3661.
  - n A current list of employers that have been prohibited from contracting with the state or any of its subdivisions shall be maintained and published on the agencies of administration and of transportation websites.

# Program Integrity

- n Report fraud or potential misclassification
  - n <http://labor.vermont.gov/InfoCenter/Fraud/tabid/147/Default.aspx> – **Fraud Reporting**
- n Report information related to a UI claimant not looking for or accepting suitable work
  - n [www.labor.vermont.gov](http://www.labor.vermont.gov) – **Forms and Publications**
    - n **Unemployment Insurance – Employer forms**
      - § Refused work – download form F-35
      - § Work to offer – download form F-34E
- n Workers' Comp policy check
  - n <http://labor.vermont.gov/InfoCenter/WorkersCompensationInsuranceCoverageVerification/tabid/1473/Default.aspx>

# Program Integrity

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- n Report “underground” or “under the table” employment
  - n <http://labor.vermont.gov> – click **Fraud Reporting** under “News”
  - n Source of original information will be kept confidential
- n Why...
  - n Prevents losing state revenues
  - n Undermines the growth of the economy
  - n Helps maintain Unemployment Trust Fund
  - n Creates equity among businesses and unemployed workers

# Keeping UI Costs Down

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- n Keep accurate records of employment agreements, dates/details of work refusals, employee performance, dates/details of warnings and other disciplinary measures
- n Provide separation information when requested, by the due dates specified
- n File an appeal if you believe a determination or decision is wrong
- n Notify us promptly if you have information a claimant is not available for work, not able to work, has refused work, or is employed.

# Keeping UI Costs Down

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- n Complete audit forms promptly
- n Report ALL “New Hires” within 10 days, including the first date of employment, now required by law
- n Submit quarterly wage reports timely to avoid penalties
- n Pay taxes promptly to obtain maximum Federal Unemployment Tax credit
- n Report all changes to your business promptly
- n Encourage your workers to seek and accept part-time or temporary work during seasonal layoffs.



# Keeping WC Costs Down

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- n Develop and maintain an effective safety and health program for each worksite
- n Promptly report and investigate all injuries or accidents – correct problems to prevent or reduce risk of re-occurrence
- n Stay in regular contact with the WC insurance adjuster handling claim

# Keeping WC Costs Down

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- n Stay in regular contact with worker – let them know they are valued
- n Develop and use an early return to work or light duty work program whenever possible
- n Promptly document and alert the adjuster to any suspected fraud and report concerns and documentation to the department.

# Resources

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- n Vermont Department of Labor's website
  - n [www.labor.vermont.gov](http://www.labor.vermont.gov)
- n State of Vermont Legislative Bill Tracking
  - n <http://www.leg.state.vt.us/database/status/status.cfm>
- n Workers' Compensation Division
  - n 802-828-2286
- n Unemployment Insurance Division – Employer Services
  - n 802-828-4344

# Questions...

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